

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



**FISCAL MEMORANDUM**

**HB 8 – SB 579**

February 24, 2014

**SUMMARY OF ORIGINAL BILL:** Creates a new Class C felony for aggravated vehicular assault and imposes a fine between \$5,000 and \$15,000.

**FISCAL IMPACT OF ORIGINAL BILL:**

Increase State Revenue – Not Significant  
Increase State Expenditures – \$13,800/One-Time/General Fund  
\$259,200/Incarceration\*

**SUMMARY OF AMENDMENT (012942):** Deletes all language after the enacting clause. Creates a new Class E felony for knowingly photographing, or causing to be photographed an individual, when the individual has a reasonable expectation of privacy, without the prior effective consent of the individual, or in the case of a minor, without the prior effective consent of the minor's parent or guardian, if the photograph would offend or embarrass an ordinary person if such person appeared in the photograph, was taken for the purpose of sexual arousal or gratification of the defendant, and the victim was under 13 years of age.

Creates a new Class D felony for knowingly photographing, or causing to be photographed an individual, when the individual has a reasonable expectation of privacy, without the prior effective consent of the individual, or in the case of a minor, without the prior effective consent of the minor's parent or guardian, if the photograph would offend or embarrass an ordinary person if such person appeared in the photograph, was taken for the purpose of sexual arousal or gratification of the defendant, the victim was under 13 years of age, and the defendant disseminates or permits the dissemination of the photograph to any other person.

Creates a new Class E felony for observing without consent when the victim is under 13 years of age.

Requires any person convicted of an offense of observation without consent or unlawful photographing in violation of privacy to register as a sex offender if the victim was younger than 13 years of age.

**FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:**

Increase State Expenditures – \$105,100/Incarceration\*

**HB 8 – SB 579**

Assumptions for the bill as amended:

- According to statistics from the Administrative Office of the Courts, there has been an average of 8.6 misdemeanor convictions for unlawful photographing in violation of privacy in the past ten years in either circuit or criminal courts. It is assumed that one in 10 misdemeanor offenses are disposed of in a circuit or criminal court rather than a general sessions court. It is assumed that there are 86 ( $8.6 \times 10$ ) misdemeanor convictions for unlawful photographing in violation of privacy each year.
- Unlawful photographing in violation of privacy is a Class A misdemeanor, unless the photograph is disseminated, in which case it is a Class E felony.
- It is assumed that five percent of these convictions ( $86 \times .05 = 4.3$ ) involve a child under the age of 13. The proposed legislation will result in four convictions for unlawful photographing in violation of privacy being sentenced as a Class E felony rather than a Class A misdemeanor.
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will not affect the fiscal impact of this provision.
- The average time served for a Class E felony is 1.31 years (478.48 days).
- According to the DOC, 42.52 percent of offenders will re-offend within three years of their release. A recidivism discount of 42.52 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law ( $4 \text{ offenders} \times .4252 = 2 \text{ offenders}$ ).
- According to the Department of Correction (DOC), the average operating cost per offender per day for calendar year 2014 is \$66.29.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on two offenders [ $4 \text{ offenders} - 2 \text{ (recidivism discount)}$ ] serving 1.31 years (478.48 days) for a total of \$31,718.44 ( $\$66.29 \times 478.48 \text{ days}$ ). The cost for two offenders is \$63,436.88 ( $\$31,718.44 \times 2$ ).
- It is assumed that the proposed legislation will result in one admission every 5 years for unlawful photographing in violation of privacy involving a child under the age of 13 and in which case the photograph is disseminated, a Class D felony under the proposed legislation.
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will not affect the fiscal impact of this provision.
- The average time served for a Class D felony is 2.06 years (752.42 days).
- A recidivism discount of 48.29 percent applies, but due to the low number of admissions added by this legislation, the recidivism discount does not impact the incarceration cost for the proposed legislation.

- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender every five years serving 2.06 years (752.42 days) for an annualized total of \$9,975.58  $[(\$66.29 \times 752.42 \text{ days}) / 5]$ .
- According to statistics from the Administrative Office of the Courts, there has been an average of 4.8 misdemeanor convictions for observation without consent in the past ten years in either circuit or criminal courts. It is assumed that one in 10 misdemeanor offenses are disposed of in a circuit or criminal court rather than a general sessions court. It is assumed that there are 48 (4.8 x 10) misdemeanor convictions for observation without consent each year.
- Observation without consent is a Class A misdemeanor. The proposed legislation creates a Class E felony for observation of a child under the age of 13 without consent.
- It is assumed that five percent of these convictions (48 x .05 = 2.4) involve a child under the age of 13. The proposed legislation will result in two convictions for observation without consent being sentenced as a Class E felony rather than a Class A misdemeanor.
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will not affect the fiscal impact of this provision.
- The average time served for a Class E felony is 1.31 years (478.48 days).
- According to the DOC, 42.52 percent of offenders will re-offend within three years of their release. A recidivism discount of 42.52 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law (2 offenders x .4252 = 1 offender).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender [2 offenders – 1 (recidivism discount)] serving 1.31 years (478.48 days) for a total of \$31,718.44  $(\$66.29 \times 478.48 \text{ days})$ .
- The total increase in state expenditures is \$105,130.90  $(\$63,436.88 + \$9,975.58 + \$31,718.44)$ .
- The proposed legislation will only enhance three misdemeanor cases to felony cases each year and will only result in one new felony case each year. It is assumed that the courts, district attorneys, and public defenders can accommodate the impact to their caseloads within their existing resources.
- It is assumed that the Tennessee Bureau of Investigation can accommodate two new offenses to the sex offender registry within existing resources.

*\*Tennessee Code Annotated § 9-4-210 requires an appropriation from recurring revenues for the estimated operation cost of any law enacted after July 1, 1986 that results in a net increase in periods of imprisonment in state facilities. The amount appropriated shall be based upon the highest cost of the next 10 years.*

**CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, appearing to read "Lucian D. Geise". The signature is fluid and cursive, with the first name "Lucian" written in a larger, more prominent script than the last name "Geise".

Lucian D. Geise, Executive Director

/trm